IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 708 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SONASAN GROUP COOP.AGRICULTURAL PRODUCE PROCESSING SOC. LTD.
Versus
HIRABHAI MADHABHAI PATEL

Appearance:
1. Special Civil Application No. 708 of 1992
MR MJ BIHOLA for
MR KM PATEL for the Petitioner
MS PAURAMI B SHETH for the Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision:16/10/2003

ORAL JUDGEMENT

#. The petitioner-Cooperative Society challenges the award dated 4th July, 1991 of the Labour Court, Ahmedabad in Reference (LCA) 1147 of 1988, awarding lumpsum

compensation to the respondent-employee in lieu of reinstatement holding that his retrenchment was illegal and void.

#. According to the respondent-workman, he was employed by the petitioner-Society on 1.1.'80 as a Manager and his service was terminated on 29th January, 1988 without notice. He, therefore, claimed reinstatement in service with full backwages on the ground that he was a workman whose services were illegally terminated.

#. Case of the petitioner was that the Reference was not maintainable, since the respondent was not a workman under the provisions of the Industrial Disputes Act, 1947. Moreover, since he had reached the age of superannuation, he was retired from 29.1.1998, by order dated 28.1.1998.

#. The Labour Court, on the basis of the material placed on record before it, came to a finding that the resignation letter of the respondent was not accepted by the petitioner and the petitioner by its resolution no. 11, passed on 30th December, 1985 in its general meeting had continued his service upto 31.10.1987. Therefore, the contention that the respondent had superannuated at the age of 58 years on 25.7.1985, was not accepted. It was also held that having regard to the fact that the predecessor of the respondent, one Fulabhai had continued in service upto 65 years, and as per the deposition of the witness at exh.17, one Manibhai Joshi was continued in service upto 72 years, there did not appear to have been any term of retirement fixed at the initial stage of appointment of the concerned workman. It was held that in the present case, there was no stipulation on the point of the age of retirement in the contract of employment between the respondent and the petitioner at the initial stage and the appointment of the respondent was not for any fixed period, and that the termination of the service of the respondent without following the procedure of Section 25F of the Act was, therefore, invalid and void. The Labour Court held that ordinarily the workman was entitled to be reinstated, but having regard to the fact that he was 64 years of age at the time of making of the award, though there was no provision for retirement at the initial stage of appointment, he could not be continued in service for an indefinite period, and since under the Rules which were operative at the time of making of the award, retirement was in vogue, the respondent should be awarded lumpsum compensation in lieu of reinstatement. Accordingly, the order of termination of the services of the respondent

passed on 23.1.1998 was set aside and the petitioner was ordered to pay Rs. 60,000/= by way of compensation in lieu of reinstatement and Rs. 500/- towards the costs.

#. It is stated that the amount payable under the award was deposited by the petitioner pursuant to the order made on 28th December, 1993 in Civil Application No. 2551 of 1990 in the present petition.

#. The learned counsel appearing for the petitioner has contended that having regard to the documents produced by the petitioner before the Labour Court, the petitioner had established that the respondent was employed in a supervisory capacity. He submitted that the wages of the respondent exceeded Rs. 1600/- even as per his own deposition, because, he was getting pay of Rs. 2600/per month and therefore, he was not a "workman" within the meaning of Section 2(s) of the Act. The learned counsel further argued that the respondent had put in his resignation letter as per which he ceased to be the workman from 29.12.1985 and, therefore, the Labour Court could not have awarded any compensation to the petitioner on the footing that his services were wrongly terminated in January, 1988.

6.1 It was also submitted that since the respondent ceased to be a workman due to his resignation, he could not have claimed any reinstatement on the ground that his service was terminated. The learned counsel argued that there were Rules of the Society governing the conditions of service of the staff of the Society and these Rules clearly showed that the Manager of the Society was employed in a supervisory capacity. Therefore, the Labour Court had no jurisdiction to make any award in favour of the respondent under the provisions of the said Act.

#. Under Section 2 (s) of the said Act "workman", inter alia, means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for higher or reward, whether the terms of employment be express or implied. However, the expression "workman" will not include any such person who falls in any of the categories enumerated in sub-clauses (i) to (iv) of Clause (s) of Section 2. Accordingly, when a person is employed in a supervisory capacity and draws wages exceeding Rs. 1600/- per mensem or exercises, either by the nature of of the duty attached to the office or by reason of the power vested in him, a function mainly of the managerial nature as contemplated by sub-clause (iv)

of Section 2(s), he would not be a workman and the provisions of the said Act will not apply to him.

#. If mere designation "Manager" was to be taken as conclusive about the nature of employment, then it would be very easy for an Employer to circumvent the provisions of the said Act by simply giving such a designation for taking away the industrial disputes from the sweep of the provisions of the said Act. Therefore, mere designation as "Manager" would not be conclusive to show that the employee so designated was employed with a view to discharge the managerial functions. In order to ascertain whether a person is employed in a supervisory capacity to discharge the functions mainly of a managerial nature, the nature of duty attached to his office or the powers vested in him are required to be ascertained. Admittedly, there was nothing on record to indicate the terms and conditions of the appointment of the respondent, because, his appointment order or the terms and conditions attached to his post were not produced on record. Therefore, the nature of the functions of the respondent was required to be ascertained from other evidence on record, namely the depositions of the witnesses and documentary evidence adduced. Once it is accepted that mere designation of Manager would not be conclusive, the documents wherein he is described as Manager are of no consequence. Merely because he was authorised to sign cheques, will not necessarily lead to the conclusion that he was employed in a supervisory capacity. The employer may authorise the employee to sign the cheques for various reasons including the reasons connected with the liabilities that may arise in respect of the dishonour of negotiable instruments. Moreover, there is nothing on record to show that the petitioner-Society had resolved that only employees working in a supervisory capacity should be authorised to sign the cheques. The evidence on record clearly shows that the respondent was acting under the complete control of the Chairman and the Managing Committee, and that as stated by him in his deposition exh. 9, he was appointed as Manager with the duties of entering into correspondence and checking accounts etc. Writing of accounts would obviously be a clerical function. The petitioner has failed to show that the functions of the respondent were mainly of managerial nature. In his cross-examination, the respondent, in terms, stated that his work was of writing proceedings of the meeting, entering into correspondence, checking accounts of the institution and discharging his duties as per the instructions given by the Managing Committee. He used to sanction leave of the employees subject to the

approval of the Chairman. The nature of the duties of the respondent were, thus, mainly of writing correspondence and checking accounts, and, his duties, thus, were mainly of a clerical nature rather than of a supervisory nature. In the above background, the Labour Court came to a conclusion in para-17 of its judgment that from the evidence on record it can be said that the concerned workman, though designated as Manager, was not working in a managerial position, but his position was that of a subordinate, working under the instructions of the Managing Committee and the Chairman of the Society. The work done by him was not in any managerial or administrative capacity. The said finding is clearly based on the evidence on record and the Labour Court has not committed any error in exercise of its jurisdiction in holding that the respondent was a workman and, therefore, the Reference was maintainable.

##. The other contention that, since the respondent had tendered his resignation, he had ceased to be a workman and, therefore, there was no question of making any payment of compensation in lieu of reinstatement for any period after 29th January, 1988, is also devoid of any substance. The Labour Court has, on the basis of the evidence on record, come to a clear finding that though the respondent had sent his resignation letter exh. 20/1, which revealed that his age was to be 58 years on 25.7.1985, that resignation letter was rejected by the Society by its resolution dated 13.12.1985, a copy of which is at Annexure:A to the petition. As per that resolution, the services of the respondent were extended upto 31.10.1987. Thus, when the resignation letter was rejected, there was no question of the said letter becoming operative on the date of his completing the age of 58 years. Admittedly, there was no stipulation on the aspect of the date of retirement between the workman and the employer at the initial stage, as held by the Labour Court in para-30 of its award. There was nothing on record to show that the provisions of Section 25F were complied with. The Labour Court was, therefore, right in holding that the retirement of the respondent was illegal. It has come on record that no resolution was passed by the Society on the date on which the respondent was removed from service and a post-dated approval was given by the Managing Committee only on 27.3.1988 by its resolution no. 35, as mentioned in para-32 of the award. The Labour Court has, therefore, not committed any illegality or error in exercise of its jurisdiction in holding that the termination of the services of the respondent was contrary to the provisions of Section 25F of the said Act, and illegal and void.

##. The Labour Court, in its discretion, however, did not reinstate the respondent for a very valid and cogent reason that he was already 64 years old, and that the recruitment rules were now in vogue which contemplated the date of retirement. The amount of Rs. 60,000/given by way of compensation in lieu of reinstatement was not, in any way excessive amount as it covered the wages of hardly two years. There is, therefore, absolutely no warrant for interference with the impugned award. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.]
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